

CONFessions & ADMISSIONS

3 APRIL 1998

MAJ PRUGH

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CONFESIONS & ADMISSIONS

CONFESION: COMPLETE ACCEPTANCE OF CRIMINAL RESPONSIBILITY

ADMISSION: STATEMENT OF ONE OR MORE FACTS WHICH CAN BE USED TO CONNECT HIM/HER TO THE CRIME

CONFessions & ADMISSIONS

WHAT VALUE IS THERE IN:

--A CONFESSION?

--ENOUGH BY ITSELF?

--AN ADMISSION?

--A DENIAL?

CONFessions & ADMISSIONS

--THE ORIGINS OF PROCEDURAL PROTECTIONS

--WHY ARE UNLAWFULLY OBTAINED CONFESSIONS INADMISSIBLE?

--U.S. CONSTITUTION

--UCMJ, ART 31

--MIRANDA v. ARIZONA, 384 U.S.436 (

CONFessions & ADMISSIONS

--THE ORIGINS OF PROCEDURAL PROTECTIONS

**--WHY ARE UNLAWFULLY OBTAINED
CONFESS-
IONS INADMISSIBLE?**

--U.S. CONSTITUTION

--5TH AMEND

**“NO PERSON SHALL BE . . . COMPELLED
IN ANY
CRIMINAL CASE TO BE A WITNESS
AGAINST
HIMSELF . . . “ AMENDMENT V, US CONST**

CONFessions & ADMISSIONS

--THE ORIGINS OF PROCEDURAL PROTECTIONS

**--WHY ARE UNLAWFULLY OBTAINED
CONFESS-
IONS INADMISSIBLE?**

--U.S. CONSTITUTION

--6TH AMEND

**“IN ALL CRIMINAL PROSECUTIONS, THE
ACCUSED SHALL . . . HAVE THE
ASSISTANCE OF
COUNSEL FOR HIS DEFENCE.” AMEND VI,
US CONST**

CONFessions & ADMISSIONS

--THE ORIGINS OF PROCEDURAL PROTECTIONS

**--WHY ARE UNLAWFULLY OBTAINED
CONFESS-
IONS INADMISSIBLE?**

--ART 31 UCMJ:

**A. NO PERSON SUBJECT TO [THE UCMJ] MAY
COMPEL
ANY PERSON TO INCRIMINATE HIMSELF OR TO
ANSWER ANY QUESTION THE ANSWER TO
WHICH MIGHT INCRIMINATE HIM**

CONFessions & ADMISSIONS

--THE ORIGINS OF PROCEDURAL PROTECTIONS

**--WHY ARE UNLAWFULLY OBTAINED
CONFESS-
IONS INADMISSIBLE?**

--ART 31 UCMJ:

B. SUSPECTS MUST BE ADVISED OF:

--NATURE OF ACCUSATION

--RIGHT TO SILENCE

--STATEMENTS MAY BE USED AGAINST

CONFessions & ADMISSIONS

--THE ORIGINS OF PROCEDURAL PROTECTIONS

**--WHY ARE UNLAWFULLY OBTAINED
CONFESS-
IONS INADMISSIBLE?**

**MIRANDA v. ARIZONA: RIGHT TO
COUNSEL BEFORE,
DURING, AND
QUESTIONING**
AFTER

CONFessions & ADMISSIONS

--THE MOTION TO SUPPRESS--LITIGATING THE ISSUE

--KEY ISSUES:

--KNOWING

--VOLUNTARY

CONFessions & ADMISSIONS

--THE MOTION TO SUPPRESS--LITIGATING THE ISSUE

**--VOLUNTARY: STATEMENT IS
INVOLUNTARY IF
IT VIOLATES:**

**--SELF-INCRIM/DUE PROCESS
CLAUSES OF FIFTH AMEND**

--ARTICLE 31

**OR COERCION, UNLAWFUL INFLUENCE, OR
UN-
LAWFUL INDUCEMENT IS PRESENT**

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--THE MOTION TO SUPPRESS--LITIGATING THE ISSUE

--PROCEDURE

--ACCUSED MAKES MOTION TO SUPPRESS

**--PROSECUTION HAS BOP TO ESTABLISH
ADMISSIBILITY OF EVIDENCE.**

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--"MAY BE PROVED BY THE

CONFessions & ADMISSIONS

--THE MOTION TO SUPPRESS--LITIGATING THE ISSUE

**--IF ADMISSIBLE: PERSON TAKING STATEMENT
CAN EXPECT TO TESTIFY FOR A
SECOND
TIME.**

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--NATURE OF THE ACCUSATION:

REQUIREMENT: THE SUSPECT MUST BE ADVISED OF THE *NATURE* OF THE ACCUSATION, “NOT THAT IT BE SPELLED OUT WITH THE

PARTICULARITY

OF A LEGALLY SUFFICIENT
SPECIFICATION.”

SIMPLY DRAWING THE SUSPECT’S
ATTENTION TO A GENERAL
PERIOD OF TIME, AND HAVING
HIM DISCUSS ALL OF HIS
ACTIVITIES , IS NOT ENOUGH.

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--NATURE OF THE ACCUSATION: HYPOS

1--INVESTIGATOR APPREHENDED A FOR AWOL, AND ALSO SUSPECTED HIM OF STEALING A CAR. DID NOT TELL HIM HE WAS SUSPECTED OF CAR THEFT. SIMPLY SAID, "THAT I WAS INTERESTED IN HIS ACTIVITIES OVER A PERIOD FROM THE 29TH OF OCT UNTIL THE 31ST, IN AS MUCH AS I WAS INTERESTED IN WHAT HIS ACTIVITIES WERE FROM THE TIME HE DEPARTED UNTIL HE WAS APPREHENDED."

2--A SUSPECTED OF RAPE. NOT WARNED OF RELATED OFFENSES OF UNLAWFUL ENTRY/INDECENT ACTS. ALSO NOT WARNED HE

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--NATURE OF THE ACCUSATION: HYPOS

3--ADVISED SUSPECTED OF MURDER. ALSO TRIED FOR FELONY MURDER AND ROBBERY RELATED TO THE MURDER IN QUESTION.

--SAME TRANSACTION?

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--WHO IS A SUSPECT?

RULE: IF THE INTERVIEWER, BASED ON CONSIDERATION OF ALL KNOWN SURROUNDING CIRCUMSTANCES, HAS REASONABLE GROUNDS TO SUSPECT THAT THE PERSON BEING INTERROGATED HAS COMMITTED AN OFFENSE, A PROPER THRESHOLD WARNING MUST BE GIVEN.

MERE WITNESSES = NO NEED TO WARN

BUT: IF THE FACTS MAKE THE INDIVIDUAL A SUSPECT AT SOME POINT DURING THE INTERVIEW, THEN ARTICLE 31 IS TRIGGERED

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--WHO IS A SUSPECT? A REASON TO COMPLY:

**ART 98: NONCOMPLIANCE WITH
PROCEDURAL RULES**

**--A FAILED TO ENFORCE OR COMPLY
WITH A CERTAIN UCMJ PROVISION**

--A HAD A DUTY TO FOLLOW UCMJ

--A KNEW OF THE DUTY

--FAILURE WAS INTENTIONAL

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--WHO IS A SUSPECT? HYPO

--CHILD BROUGHT TO HOSPITAL WITH BRUISES OF THE BODY, A BRUISE OVER ONE EYE, AND 3 BRUISES OF THE SKULL FROM “FALL FROM COUCH.” CHILD DIES. DR TELLS INVESTIGATOR OF A STUDY INVOLVING 3’ FALLS. NO HOSPITALIZATIONS REQUIRED. INVESTIGATOR PRESERVES BODY, SEIZED THE COUCH. QUESTIONS FATHER W/O WARNING.

--HONESTLY AND REASONABLY NOT A SUSPECT?

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--MEANING OF INTERROGATION

RULE: INTERROGATION CAN EXTEND ONLY TO WORDS OR ACTIONS ON THE PART OF POLICE OFFICERS THAT THEY SHOULD HAVE KNOWN WERE REASONABLY LIKELY TO ELICIT AN INCRIMINATING RESPONSE.

--INTENT OF POLICE CRUCIAL

--HONEST AND REASONABLE STANDARD

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--MEANING OF INTERROGATION HYPOS

1--BREWER v. WILLIAMS

2--RHODE ISLAND v INNIS

3--ACCUSED ARRESTED FOR MURDER OF WOMAN IN THE COURSE OF ROBBERY OF FURS FROM HOME. DETECTIVE STACKS FURS OUTSIDE ACCUSED'S CELL WITHOUT SAYING A WORD. SUSPECT CONFESSED.

4--A ARRESTED FOR MURDER OF INFANT SON. ASKED FOR LAWYER. WIFE WANTED TO SPEAK TO A. POLICE TRIED TO DISSUADE HER.

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--MEANING OF INTERROGATION HYPOS

5--A ASKED FOR LAWYER. WHILE COMPLETING CID FORM 44 A ASKED "HOW SERIOUS OF AN INCIDENT THIS WAS." MADE INCRIMINATING STATEMENTS.

6--A ASKED FOR LAWYER. B, HIS FELLOW IN CRIME, CONFESSED. CID TELLS A. A CONFESSES.

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--MEANING OF STATEMENT:

NOT:

--PHYSICAL ACTS

--HANDWRITING

--BODY FLUIDS

--VOICE SAMPLES

--CONSENT TO SEARCH

--REQUESTS FOR ID

CONFessions & ADMISSIONS

--MEANING OF STATEMENT: HYPOS

1--A MADE TO TRY ON BLOUSE.

2--ROBBER HAD GOLD TOOTH ON HIS RIGHT FRONT WITH A STAR ON IT. A MADE TO SHOW TOOTH TO JURY.

3--GOVERNMENT TOOK IMPRESSIONS OF A'S TEETH

4--DUI VIDEOTAPE WITH SOUND ON.

5--LINEUPS WITH SPOKEN WORDS.

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--MEANING OF STATEMENT: HYPOS

7--A ASKED FOR CONSENT TO SEARCH AFTER INVOKING RIGHTS.

8--MPI ASKED FOR ID CARD AND RATION CONTROL PLATE WITHOUT REASONABLE SUSPICION IN BLACK MARKET CASE.

9--A'S COMMANDER SUSPECTED HIM OF POSSESSING MARIJUANA. SAYS "I THINK YOU KNOW WHAT I WANT, GIVE IT TO ME." A HANDS OVER MJ FROM POCKET.

10--ARRESTING MP ASKED A ABOUT BLOOD ON

CONFESIONS & ADMISSIONS

--OFFICIAL QUESTIONING:

THREE REQUIREMENTS FOR ART 31 PROTECTIONS:

1--SUSPECT

2--INTERROGATION

**3--QUESTIONER ACTING IN OFFICIAL
CAPACITY**

**KEY = SUSPECT MUST PERCEIVE ENCOUNTER
TO BE AN OFFICIAL INTERROGATION.**

**NOT OFFICIAL IF MOTIVATED SOLELY BY
PERSONAL CONSIDERATIONS**

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--OFFICIAL QUESTIONING: HYPOS

1--QUESTIONED BY FELLOW PRISONER

2--AF SP FRIEND QUESTIONS. BUDDY TALK

3--SECTION LEADER AND FRIEND ESCORTS OFF POST

4--UNDERCOVER INFOMANT: EMERGING CHANGE?

5--SHOW AND TELL REGULATIONS.

6--MEDICAL PERSONNEL/ SOCIAL WORKERS.

CONFessions & ADMISSIONS

--RIGHT TO COUNSEL:

MIRANDA: MUST WARN SUSPECT:

1--RIGHT TO SILENCE

2--STATEMENT USED

**3--PRESENCE OF ATTY EITHER RETAINED
OR APPOINTED.**

--WHAT IS A SAYS HE ALREADY KNOWS RIGHTS?

CONFessions & ADMISSIONS

--RIGHT TO COUNSEL:

CUSTODIAL INTERROGATION:

--TRIGGERS MIRANDA RIGHTS

--ART 31 RIGHTS TRIGGERED EARLIER

RESOLUTION?

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--RIGHT TO COUNSEL: ADVISING THE SUSPECT

--TECHNIQUE?

--EXAMPLE

--WHAT IF A REFUSES TO SIGN?

--EQUIVOCAL REQUEST FOR LAWYER?

**“CAN I HAVE A LAWYER OR IS IT TOO
LATE FOR THAT?”**

CONFessions & ADMISSIONS

--RIGHT TO COUNSEL: CIVILIAN SUSPECTS

ISSUES

**1--JUDGE MUST DECIDE VOLUNTARINESS
UNDER TITLE 18**

**2--SIX HOUR RULE: INTERROGATION MUST
BE WITHIN 6 HOURS OF
ARREST/APPREHENSION.**

3--UNION REP

--NO WARNING REQUIRED

CONFessions & ADMISSIONS

--SPONTANEOUS STATEMENTS:

1--SEELOFF EXAMPLE

2--WILLEFORD

CONFessions & ADMISSIONS

--HANDLING NONWAIVER

TYPE I: SILENCE. NO QUESTIONS

TYPE II: ATTORNEY REQUESTED

**EDWARDS RULE = BRIGHT LINE
STANDARD. IF A ASKS FOR ATTORNEY,
QUESTIONING MUST STOP.**

**MINNICK = A WANTED LAWYER
PRESENT WHEN HE TALKED ON MONDAY.
DIFFERENT QUESTIONER CAME. HE
CONFESSED.**

CONFessions & ADMISSIONS

--HANDLING NONWAIVER

1--FOREIGN INTERROGATION.

2--SUSPECT INITIATES FURTHER QUESTIONING

3--IMPUTED KNOWLEDGE. HOW FAR?

4--MAKING COUNSEL AVAILABLE.

**DIFFERENCES FOR THOSE NO IN
CUSTODY?**

**5--REQUEST FOR POLYGRAPH AFTER
INVOCATION OF RIGHT TO COUNSEL.**

CONFessions & ADMISSIONS

--HANDLING NONWAIVER

**6--10 MINUTE CONVERSATION WITH ATTY OVER
LONG DISTANCE PHONE LINE.**

7--NON-CUSTODY A GIVEN

--7 DAYS TO SPEAK TO ATTY

--3 DAYS

--A WEEKEND.

CONFESIONS & ADMISSIONS

--VOLUNTARINESS:

--COERCION (NEGATIVE INFLUENCE)

**--UNLAWFUL INDUCEMENTS (POSITIVE
INFL)**

--POLICE DECEPTION

CONFessions & ADMISSIONS

--VOLUNTARINESS: HYPOS

1--TRUTH SERUM

2--QUESTIONED FROM 7PM FRI TO 9AM SAT

3--MUTT AND JEFF

4--TRICKERY AFTER RIGHTS WAIVER.

5--TRICKERY BEFORE RIGHTS WAIVER.

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--PUBLIC SAFETY

--EXCLUSIONARY RULE

EXCEPTIONS

1--INDEP SOURCE

2--INEVITABLE DISCOVERY

3--IMPEACH A'S TESTIMONY

**--NEED FOR CURATIVE WARNING OR
CLEANSING STATEMENT.**

CONFESIONS & ADMISSIONS

--LINEUPS

GENERAL

**PHOTOGRAPHIC: NO RIGHT FOR ATTY
OR ACCUSED TO BE
PRESENT**

DUE PROCESS: ATTY PRESENT

CHARGES PREFERRED

UNDER PRETRIAL RESTRAINT.